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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,831	12/28/2000	Ernest H. Roberts	RTS 2 0017	8674

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EXAMINER

VARNER, STEVE M

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 12/18/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/750,831	ROBERTS, ERNEST H.
	Examiner	Art Unit
	Steve M Varner	3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 28 December 2000.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-7, 12-15, are rejected under 35 U.S.C. 102(e) as being anticipated by Carman.

Regarding claim 1, Carman teaches a barrier implement (1) with a sheet (upper part of 3) circumscribing a passageway along which arthropods crawl. (Fig. 1) The sheet has a dimension sized relative to the passageway. There is an arthropod deterring component (5). (Fig. 1)

Regarding claims 2, 3, Carman teaches the sheet (upper part of 3) of molded or extruded plastic (Col. 5, Line 1-5).

Regarding claim 4, 5, pliable or stiff are inherent properties of plastic.

Regarding claim 6, the arthropod deterring component (5) is molded directly therein. (Fig. 4)

Regarding claim 7, the arthropod deterring component (5) is applied thereon. (Fig. 4)

Regarding claim 12, Carman circumscribes a passageway defined by an exterior surface of a narrow or elongated structure (4). (Fig. 1)

Regarding claim 13, Carman shows a shield (lower part of 3). (Fig. 4)

Regarding claim 14, Carman shows a flange (lower part of 3). (Fig. 4)

Regarding claim 15, Carman shows a sheet (upper part of 3) configured in an O-shape to fit behind the flange (lower part of 3). (Fig. 4)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-11, 16-20, rejected under 35 U.S.C. 103(a) as being unpatentable over Carman as applied in the rejection of claim 1 above.

Regarding claim 8, 9, 10, it would have been an obvious design choice to place Carman's tree trunk barrier for pest control around or between a utility wall plate and it's abutting wall.

Regarding claim 11, Carman shows the opposing ends of the sheet (upper part of 3) equal in length. (Fig. 1)

Regarding method claims 16-20, the methods claimed are the obvious methods for using Carman's tree trunk barrier for pest control.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Manak reveals a plastic tree band. Ritter teaches a rodent exclusion device.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7687 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV  
October 26, 2001

  
Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600